

## DOCUMENT 00506

STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the 21<sup>st</sup> day of November in the year 2017 by and between Stephen A. Noller and Beverly P. Noller, and Dr. John M. Halwig and Nancy D. Halwig (hereinafter called OWNER) and Pinholster Construction LLC, d/b/a PINCO (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK.**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Installation and final operation of two grinder pump stations, approximately 550 ft. of 8-inch water line, 550 ft. of 1 ½ inch & 1 ¼" of HDPE SDR 17 tubing, and other misc. items as shown in the Bid Form and as shown on the construction plans to provide a complete water & sewer system.

**ARTICLE 2. ENGINEER.**

The Project has been designed by Thomas & Hutton Engineering Co. who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIMES.**

All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of essence of the Contract.

- 3.1 The Work will be substantially completed within **(45) days** after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within **Sixty (60) days** after the date when the Contract Times commence to run. Included in the contract times are ten (10) days for rain delay. Time delays due to rain in excess of the above days shall be reported by the Contractor to the Engineer in writing, within thirty (30) days of each event.
- 3.2 *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will continue to suffer loss of use if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by OWNER if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \_\_\_\_\_ and 00/100 dollars (\$0,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR, shall pay OWNER \$0.00 for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

**ARTICLE 4. CONTRACT PRICE****4.1 Unit PRICE WORK**

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds of the amounts determined for all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the CONTRACTOR'S UNIT PRICE BID (attached hereto as an exhibit), said amount being:

Sixty-five thousand, Three hundred forty-nine dollars

(\$ 65,349 .00)

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03B of the General Conditions.

#### ARTICLE 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 *Progress Payments; Retainage.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, and paid by the escrow agent within 15 days of application date during performance of the Work as provided in paragraphs 5.1.1., 5.1.1.2, and 5.2, below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) as provided in the General Requirements.

5.1.1 *For Cost of Work:* Progress payments on account of the Cost of the Work will be made:

- 5.1.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below; but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

90% of the Work completed (with the balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% of Cost of the Work (with the balance being retainage) applicable to materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02.A.1 of the General Conditions).

- 5.1.1.2 Upon Substantial Completion, in an amount sufficient to increase the total payments to CONTRACTOR to 95% of the Cost of the Work, (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

- 5.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

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**ARTICLE 6. INTEREST.**

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

**ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda indicated in Article 8 hereinafter) and the other related data identified in the Bidding Documents.
- 7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 CONTRACTOR has carefully studied all reports of explorations and test of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified (if any) in the Supplementary Conditions as provided in the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6 CONTRACTOR is aware of the owner requirements for construction warranty period of One (1) year for equipment, materials, and workmanship.
- 7.7 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.8 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 8. CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

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- 8.1 This Agreement (pages 00506-1 to 00506-6, inclusive).
- 8.2 Specifications consisting of 6 technical provisions, as listed in table of contents thereof. Contractor did not have these during and when the bid was submitted; any requirement above and beyond normal and customary shall not be binding upon contractor if it causes harm.
- 8.3 Drawings consisting of sheets C0 through C3.4 with each sheet bearing the following general title:

SHEET NO.	TITLE
C0	Cover Sheet
G1.1	General Notes and Index
C1.1	Overall Site Plan
C2.1	Water & Sewer Plan
C2.2	Water & Sewer Profile
C3.1	Pump Station Section & Details (Halwig Resident)
C3.2	Pump Station Section & Details (Noller Resident)
C3.3	Water & Sewer Detail
C3.4	Details

- 8.4 Addenda numbers \_\_\_ to \_\_\_ inclusive.

Exhibits to this Agreement:

- a. CONTRACTOR's revised Bid ( 00313-1 through 00313-5, inclusive) marked "Exhibit A."
- b. Any modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

#### ARTICLE 9. MISCELLANEOUS.

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in five (5) counterparts. Two counterparts each have been delivered to OWNER and CONTRACTOR and one counterpart to ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by Owner and Contractor or identified by ENGINEER on their behalf.

This Agreement will be effective on November 27, 2017 (which is the Effective Date of the Agreement).

OWNER:

Stephen A. Noller and Beverly P. Noller  
John M. Holwig and Nancy D. Holwig

BY

BY

ATTEST

BY

BY

ATTEST

CONTRACTOR:

Pinholster Construction LLC, d/b/a PINCO

BY

Scott L. Pinholster

ATTEST

136 Airport Park Drive  
 Garden City, Georgia 31408  
 912 963-2116

License: G 11225

Seal

Address for giving notices:

6045 ~~Alice~~ Forsyth Rd.  
Macon, GA 31210

Address for giving notices:

365 TRIN ST NE  
ATLANTA, GA 30309

Agent for service of process: \_\_\_\_\_

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## Exhibit A

DOCUMENT 00313

revised 11/13/17

revised 11/3/17

BID FORM

11/17/17

PROJECT IDENTIFICATION: Daufuskie Island, Melrose  
46 & 36 Driftwood Lane  
Water & Sewer Relocation

CONTRACT IDENTIFICATION  
AND NUMBER: J - 26606.0000

THIS BID IS SUBMITTED TO: Dr. Halwig & Ms. Noller

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ~~30~~ days after the day of Bid opening, or for such longer period that BIDDER may agree to in writing upon request of OWNER.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
  - (a) BIDDER has examined and carefully studied the Plans and Specifications for the work and contractual documents relative thereto, and has read all Technical Provisions, Supplementary Conditions, and General Conditions, furnished prior to the opening of Bids; that BIDDER has satisfied himself relative to the work to be performed.
  - (b) BIDDER further acknowledges hereby receipt of the following Addenda:

ADDENDUM NO.	DATE

- (c) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance, and furnishing of the Work;
- (d) BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- (e) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structure at or contiguous to the site

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(except underground Facilities) have been identified in the Supplementary Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER's purposes. BIDDER acknowledges that OWNER and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. ~~BIDDER has obtained and carefully studied (or assumes responsibility for having done so)~~ all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Bidding Documents.

- (f) BIDDER is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work for which this Bid is submitted as indicated in the Bidding Documents.
  - (g) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Bidding Documents and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
  - (h) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Bidding Documents and the ~~written resolution thereof by ENGINEER is acceptable to BIDDER.~~ The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
  - (i) This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
  - (j) Bidder is aware of the owner requirement for construction Warranty period of no less than one (1) Year for equipment, materials, and workmanship.
4. BIDDER will complete the Work in accordance with the Contract Documents for the following price(s):

## Bid Form

Daufuskie Island, Melrose  
46 & 36 Driftwood Lane  
Water & Sewer Relocation

9/27/17  
11/3/17  
11/13/17  
~~11/17/17~~

ITEM.	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Mobilization/Demobilization	JOB	LUMP SUM	11,700
2	<del>Clearing</del> Erosion Control	JOB	LUMP SUM	1,200
3	8 – inch PVC C-900, DR-18 Water Main	507	<del>29.58</del> /LF	15,000 <del>\$14,997</del>
4	1 ½ – inch HDPE Tubing SDR 17 Force Main	550	<del>12.55</del> /LF	6,900 <del>\$ 6,902</del>
5	1 ½ – inch HDPE Tubing SDR 17 Force Main	360	<del>15.14</del> /LF	5,450 <del>\$ 5,450</del>
6	Grinder Pump Station Installation (2 each)	JOB	LUMP SUM	4,600
7	Connect Pump Station to Residence Sewer Lateral (2 each)	JOB	LUMP SUM	2,550
8	Cap Existing Gravity Sewer	1	<del>900</del> EA	900
9	Cap Existing 8 – inch Water Main	1	<del>1150</del> EA	1,150
10	Connect 1 ½ – inch Force Main to Existing Manhole	1	<del>2300</del> EA	2,300
11	Connect New 8-inch Water Main to Existing Water Main	1	<del>6600</del> EA	6,600
12	Electrical Connection	Job	Lump Sum	7,000
	<del>13 Road Repair - 6" concrete</del>			<del>2,300</del> by others
Total Construction Cost				\$ 66,350 <del>\$ 65,349</del>

TOTAL BID FOR Total Construction Costs:

~~Seventy three thousand, three hundred fifty~~ Dollars

(\$ ~~73,350.00~~ ~~-\$67,650.00~~ \$ 65,350 )

Unit Prices have been computed in accordance with paragraph 11.03.B of the General Conditions.

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see notes on last page



### ESCROW AGREEMENT

THIS ESCROW AGREEMENT (hereinafter the "Agreement") is made and entered into as of this 21 day of November, 2017 (hereinafter the "Effective Date") by and among Pinholster Construction, LLC, d/b/a Pinco (hereinafter the "Contractor"), Stephen A. Noller, Beverly P. Noller, John M. Halwig, and Nancy D. Halwig (hereinafter the "Owner"); and McCorkle & Johnson, LLP (hereinafter the "Escrow Agent").

WHEREAS, the Contractor and the Owner have entered into a Standard Form of Agreement Between Owner and Contractor, dated this 21st day of November, 2017 (hereinafter the "Contract", a copy of which is attached hereto as Exhibit A and incorporated herein; and

WHEREAS, the Contractor and the Owner wish to provide for the Contract Price, as set out in the Contract, to be held in escrow and to be disbursed by the Escrow Agent in accordance with the Owner's payment obligations under the Contract;

NOW THEREFORE, the parties hereto agree as follows:

- 1) **Appointment of an Escrow Agent.** Owner and Contractor hereby appoint and designate the Escrow Agent as the escrow agent hereunder upon the terms and conditions and for the purposes set forth herein. The Escrow Agent hereby accepts its appointment and agrees to act as Escrow Agent and to hold and disburse the Escrow Funds upon the terms and conditions and for the purposes set forth in this Agreement. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein.
- 2) **Escrow Money Deposit.** Immediately upon execution of this Agreement, the Owner shall deliver to the Escrow Agent the sum of \$ 65,350.00, i.e., the Contract Price. The Escrow Agent will deposit said sum in its client escrow account and will hold it in escrow subject to the terms of this Agreement.
- 3) **Disbursement of Escrowed Funds.** The Escrow Agent shall disburse funds to the Contractor as and when due from the Owner in accordance with the Contract and, specifically, with the terms of Article 5 thereof.
- 4) **Termination of the Escrow Account.** In the event of termination of the Contract prior to completion to disbursement of all escrowed funds, then this Agreement shall terminate upon notice to the Escrow Agent of such termination by both Owner and Contractor. The Escrow Agent shall disburse to the Contractor such amount as may be due to the Contractor under the terms of the Contract in light of such termination, up to the total amount of funds then held in escrow, and any balance shall be disbursed to the Owner.
- 5) **Liability of the Escrow Agent.** Escrow Agent assumes no responsibility for and shall not be liable for any loss or damage resulting from any of the following:

- a) The calculation of or the amount of funds requested by Contractor.
  - b) Payment or failure of the Owner to pay amounts to the Escrow Agent.
  - c) Failure to perform under the Contract by Owner or Contractor.
  - d) Any income or other tax relating to funds held by Escrow Agent.
  - e) The identity of parties or the sufficiency of any agency or the authenticity of any written and signed notice or request for funds purporting to have been written by the proper party and believed by Escrow Agent to be genuine.
  - f) Any error of judgment or for any act done or omitted by Escrow Agent in good faith and for anything which Escrow Agent in good faith does or refrains from doing in connection therewith.
  - g) Acting on any document believed by Escrow Agent to be genuine and signed by the proper party or parties.
  - h) The legal effect or desirability of any instrument exchanged by any parties or deposited by the parties, including interpretation of this Agreement.
- 6) **Indemnification of Escrow Agent.** The parties hereto jointly and severally promise to save Escrow Agent harmless and to indemnify Escrow Agent from and against all damages or losses, including attorney's fees, resulting from a dispute over the terms of this Agreement, termination of this Agreement, dispute over payment or any actions on the part of Escrow Agent acting in good faith under this Agreement. The parties further agree, jointly and severally, to defend Escrow Agent from all liability, claim or charge asserted against it as a result of acts or omissions and from any and all amounts Escrow Agent may be required to pay on account of such, including, but not limited to, expenses, damages and attorney fees.
- 7) **Controversies.** If any controversy arises between the parties to this Agreement, or with any other party, relating in any way to the subject matter of the Contract or of this Agreement, or to the terms or conditions of either, then the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, it may require, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for interest or damage. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court the escrowed funds and all documents and certificates related thereto, attributable to costs, expenses, charges and reasonable attorneys' fees incurred by

it due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of the Agreement, and the action will be deemed to be solely a dispute between the parties subject to the Contract.

8) **Miscellaneous.**

a) *Assignment; Binding Upon Successors and Assigns.* None of the parties hereto may assign any of its rights or obligations hereunder without the prior written consent of the other parties, which shall not be unreasonably withheld.

b) *Severability.* If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be held to be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the invalid or unenforceable provision.

c) *Entire Agreement.* This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto.

d) *Other Remedies.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy shall not preclude the exercise of any other.

e) *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the parties hereto and only with the mutual consent of all parties, which consent shall not be unreasonably withheld. The waiver by a party of any breach hereof for default in payment of any amount due hereunder or default in the performance hereof shall not be deemed to constitute a waiver of any other default or any succeeding breach or default.

f) *Absence of Third Party Beneficiary Rights.* No provisions of this Agreement are intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any subcontractor, client, customer, affiliate, shareholder, partner of any party hereto or any other person or

entity unless specifically provided otherwise herein, and, except as so provided, all provisions hereof shall be solely between the parties to this Agreement.

g) *Governing Law.* It is the intention of the parties hereto that the internal laws of the State of Georgia shall govern this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have read the foregoing and all Exhibits incorporated therein and agree and accept such terms as of the Effective Date.

Pinholster Construction, LLC, d/b/a Pinco

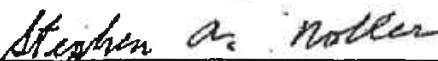
McCorkle & Johnson, LLP


By: 

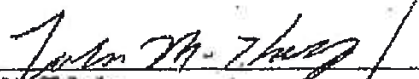
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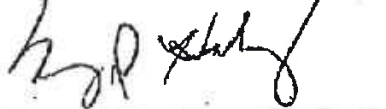
Its: Manager

Its: \_\_\_\_\_

  
Stephen A. Noller

  
Beverly P. Noller

  
John M. Halwig

  
Nancy D. Halwig

Q:\DATA\WPDATA\29002927-04 escrow agmt.docx

From: Stanton, Robin <RStanton@MCNAIR.NET>  
 Sent: Friday, December 8, 2017 6:08 PM  
 To: jmhalwigmd@aol.com; ndhalwig@aol.com; Josey, J. Rene;  
 sororian.f@thomasandhutton.com; scott@pinco.biz; bev.noller@gmail.com  
 Subject: RE: Your directive to cease and desist via Turner Paget

Dr. Halwig,

Thank you for the information provided. I have also had a long conversation with Rene this evening. The letter from the Debtor does not grant permission to access and lay down lines on the golf course— it only tentatively approves sketching and development for one route. It was not approved by the bankruptcy court, who has control of the debtor's business, and it is definitely outside of the debtors' ordinary course of business, which is the only things they could do in bankruptcy without court approval.

Running utility easements across a golf course designed for an entire community is a material project, requiring detailed plans, specifications, technical drawings, completion bonds, damage bonds, review of construction contract, proof of contractor insurance for the benefit of the owner and lender, confirmation of financial ability to pay for the project, lien waivers from the contractor, subcontractors, waiver of claims by the homeowners and contractor, indemnity agreement from the owner and contractors in regard to any loss or damage to the property and as to accidents occurring during the project, professional assessment of impact on the golf course, time table for start and completion, written and recorded easement agreement, determination of ownership of the lines after installation, maintenance and replacement agreement to determine who will be responsible for those costs after installation, and has to be undertaken with a view towards the best interest of the entire community. We have not been provided any of those items. I also don't know which of the 2 routes shown on the drawing is actually being undertaken – I am fairly sure Rene told me but I had not looked at the drawings when we were talking so I don't remember.

I understand your frustration. I also understand you have a long term commitment in Daufuskie, would like to coordinate with the new owners regarding a seawall that benefits both your house and the golf course, and that you have contributed the cost of constructing a cart path for the good of the community and are a community minded resident.

Please understand that my client also has a long term commitment to Daufuskie and has to look at this with a big picture. And we are just now hearing about this problem and proposed solution, which was apparently started without obtaining any easement or valid permission to come onto the golf course.

I have forwarded the information provided to my client. I would request you provide or have someone provide, the balance of the information listed above for their review. In the meantime, I repeat that no permission has been granted to run water/sewer lines across the golf course and work should stop immediately. I would appreciate written confirmation that work has stopped and will not be re-started without written authorization from Odeon or their counsel.

Sincerely,  
 Robin



**Robin C. Stanton**

Shareholder  
rstanton@mcnair.net

**McNair Law Firm, P.A.**

Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201  
803 799 9800 Main | 803 933 1516 Fax  
Mailing Post Office Box 11390 | Columbia, SC 29211

**VCard** | **Bio URL** | **Website**



From: jmhalwigmd@aol.com [mailto:jmhalwigmd@aol.com]

Sent: Friday, December 08, 2017 4:56 PM

To: Stanton, Robin <RStanton@MCNAIR.NET>; ndhalwig@aol.com; jjoysey@turnerpadget.com;  
sororian.f@thomasandhutton.com; scott@pinco.biz; bev.noller@gmail.com

Subject: Re: Your directive to cease and desist via Turner Paget

Here are the other relevant documents

-----Original Message-----

From: Stanton, Robin <RStanton@MCNAIR.NET>

To: Nancy Halwig <ndhalwig@aol.com>; jjoysey <jjoysey@turnerpadget.com>; sororian.f  
<sororian.f@thomasandhutton.com>; scott <scott@pinco.biz>; bev.noller <bev.noller@gmail.com>

Cc: Halwig J. Michael <jmhalwigmd@aol.com>

Sent: Fri, Dec 8, 2017 4:47 pm

Subject: RE: Your directive to cease and desist via Turner Paget

I have responded to your counsel but for the benefit of others on this email, I have asked him for a copy of whatever agreement you are referencing and again require that work cease immediately until this is resolved.

Robin C. Stanton

Shareholder

[rstanton@mcnair.net](mailto:rstanton@mcnair.net)

McNair Law Firm, P.A.

Columbia Office | 1221 Main Street | Suite 1800 | Columbia, SC 29201

803 799 9800 Main | 803 933 1516 Fax

Mailing Post Office Box 11390 | Columbia, SC 29211

Bio: <http://www.mcnair.net/Professionals/rstanton>

Website: <http://www.mcnair.net>

-----Original Message-----

From: Nancy Halwig [mailto:ndhalwig@aol.com]

Sent: Friday, December 08, 2017 4:11 PM

To: Stanton, Robin <RStanton@MCNAIR.NET>; jjoysey@turnerpadget.com; sororian.f@thomasandhutton.com;  
scott@pinco.biz; bev.noller@gmail.com

Cc: Halwig J. Michael <jmhalwigmd@aol.com>

Subject: Re: Your directive to cease and desist via Turner Paget

Robin:

Resending due to typo in Bev Nollers' email address in original email.

Nancy Halwig

Sent from my iPhone

> On Dec 8, 2017, at 3:55 PM, Nancy Halwig <[ndhalwig@aol.com](mailto:ndhalwig@aol.com)> wrote:

>

> Unfortunately it appears that you and your client are not aware of the prior agreement which had been obtained in September of a water and sewer easement to reconnect our home and the Nollers. We have been without this vital service since Hurricane Matthew. It's has taken over a year plus to obtain all the approvals and during this period we have had no use of the homes. To be asked to cease work at this time comes as a total surprise. You will receive under separate cover from Rene Josey a copy the letter of agreement.

>

> We realize that there are a lot of issues with the resort as it continues to be undercapitalized and unable to meet its obligations which has devalued and made our property currently inhabitable. We ask that you and your client honor the commitments made by the prior owners. It is in everyone's best interest that our home and the Nollers are maintained and inhabitable. We had hoped to be able to be able to finally use our home over the holidays. An expeditious resolution is needed!

>

> Thank you.

>

> Nancy Halwig

> J Michael Halwig

>

>

>

>

>

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>

>

> Sent from my iPhone

---

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From: Scott Pinholster <scott@pinco.biz>  
 Sent: Thursday, December 14, 2017 8:15 AM  
 To: Robin Stanton  
 Cc: Josey, J. Rene; sororian.f@thomasandhutton.com; 'Bev Noller'; 'Halwig J. Michael'; 'Nancy Halwig'  
 Subject: melrose residents grinder stations  
 Attachments: executed contract.pdf; Pinco certificate.pdf

12-14-17

See attached scan of the construction contract & escrow agreement, and CoI. Our contract does not require bonds, therefore P & P bonds and not in force.

The contract provides 45 days to substantial completion, but we anticipated the actual on site work to be performed in near 2 weeks. Since we have been requested to not install any pipes across the fairway, this project will be extended. Our work through the fairway is to install only 2 pipelines 3 feet below ground. It will only take 1 – 2 days to do this and not affect the present golf course in any detrimental manner. Presently, the golf course has numerous pipelines and wires below grade that belong to DIUC, golf club, and SCE & G.

All the other work in our contract is now mostly complete; we await permission to install the pipelines beneath golf course. We intend to remove some equipment from the island today on the barge.

Scott L. Pinholster



O (912) 963-2116

C (912) 398-0228

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**From:** Scott Pinholster <scott@pinco.biz>  
**Sent:** Thursday, December 14, 2017 10:28 AM  
**To:** Robin Stanton; 'Nancy Halwig'  
**Cc:** Josey, J. Rene; sororian.f@thomasandhutton.com; 'Bev Noller'; 'Halwig J. Michael'  
**Subject:** RE: melrose residents grinder stations

**12-14-17**

**Via cell phone**

**Our equipment may already be on the barge**

**From:** Scott Pinholster [mailto:scott@pinco.biz]  
**Sent:** Thursday, December 14, 2017 10:20 AM  
**To:** 'Stanton, Robin' <RStanton@MCNAIR.NET>; 'Nancy Halwig' <ndhalwig@aol.com>  
**Cc:** 'Josey, J. Rene' <JJosey@TurnerPadget.com>; 'sororian.f@thomasandhutton.com' <sororian.f@thomasandhutton.com>; 'Bev Noller' <bev.noller@gmail.com>; 'Halwig J. Michael' <jmhalwigmd@aol.com>  
**Subject:** RE: melrose residents grinder stations

**12-14-17**

If there is a strong possibility we will be allowed access today, let me know immediately..  
 Otherwise, we will have our equipment on the outgoing barge.

Scott L. Pinholster



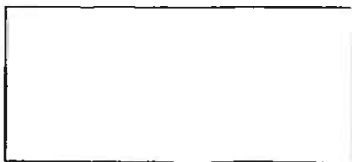
O (912) 963-2116

C (912) 398-0226

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**From:** Stanton, Robin [mailto:RStanton@MCNAIR.NET]  
**Sent:** Thursday, December 14, 2017 9:20 AM  
**To:** Nancy Halwig <ndhalwig@aol.com>; Scott Pinholster <scott@pinco.biz>  
**Cc:** Josey, J. Rene <JJosey@TurnerPadget.com>; sororian.f@thomasandhutton.com; Bev Noller <bev.noller@gmail.com>; Halwig J. Michael <jmhalwigmd@aol.com>  
**Subject:** RE: melrose residents grinder stations

I have forwarded this information on to my client.



**Robin C. Stanton**  
Shareholder  
rstanton@mcnair.net

**McNair Law Firm, P.A.**

Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201  
803 799 9800 Main | 803 933 1516 Fax  
Mailing Post Office Box 11390 | Columbia, SC 29211

**VCard | Bio URL | Website**



From: Nancy Halwig [<mailto:ndhalwig@aol.com>]

Sent: Thursday, December 14, 2017 9:02 AM

To: Scott Pinholster <[scott@pinco.biz](mailto:scott@pinco.biz)>

Cc: Stanton, Robin <[RStanton@MCNAIR.NET](mailto:RStanton@MCNAIR.NET)>; Josey, J. Rene <[JJosey@TurnerPadgett.com](mailto:JJosey@TurnerPadgett.com)>;

[sororian.f@thomasandhutton.com](mailto:sororian.f@thomasandhutton.com); Bev Noller <[bev.noller@gmail.com](mailto:bev.noller@gmail.com)>; Halwig J. Michael <[jmhalwigmd@aol.com](mailto:jmhalwigmd@aol.com)>

Subject: Re: melrose residents grinder stations

Thank you Scott!

Robin-please give us authorization to complete work so we may use our homes over the holidays!

Thank you!

Nancy, Mike and Bev

Sent from my iPhone

On Dec 14, 2017, at 8:14 AM, Scott Pinholster <[scott@pinco.biz](mailto:scott@pinco.biz)> wrote:

12-14-17

See attached scan of the construction contract & escrow agreement, and Col. Our contract does not require bonds, therefore P & P bonds and not in force.

The contract provides 45 days to substantial completion, but we anticipated the actual on site work to be performed in near 2 weeks. Since we have been requested to not install any pipes across the fairway, this project will be extended. Our work through the fairway is to install only 2 pipelines 3 feet below ground. It will only take 1 - 2 days to do this and not affect the present golf course in any detrimental manner. Presently, the golf course has numerous pipelines and wires below grade that belong to DIUC, golf club, and SCE & G.

All the other work in our contract is now mostly complete; we await permission to install the pipelines beneath golf course. We intend to remove some equipment from the island today on the barge.

Scott L. Pinholster

<image001.jpg>

Complainants 00112



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<executed contract.pdf>

<Pinco certificate.pdf>

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**From:** Sororian, Fred <sororian.f@thomasandhutton.com>  
**Sent:** Friday, December 15, 2017 9:23 AM  
**To:** Robin Stanton; Nancy Halwig  
**Cc:** Halwig J. Michael; Josey, J. Rene; bev.noller@gmail.com; Scout Pinholester (scott@pinco.biz)  
**Subject:** RE: Your directive to cease and desist via Turner Paget  
**Attachments:** Gof C. Owner Approval Letter.pdf

Ms. Robin,

Please find attached a letter from the previous owner (The Pelorus Group) granting us permission to install water & sewer line through the golf course. Honestly, I don't understand why you asking us to cease the project in the middle of construction. We followed all the rules and regulations, secured permission from the golf course owner, obtained DHEC and OCRM permit, obtained utility company permission for the water & sewer services, hired licensed contractor to install the utility services, and performed inspection to make sure everything done correctly. As you can see my client spent a huge amount of money and endured more than a year of hardships just to have water & sewer for their property. This is not a whole lot to ask. As a home owner they are entitled to have utility services. They paid tapping fees and monthly user fees. This is not fair after all they been through to cease the construction and wait for your client to make up their mind. Please rely to your client that we need to move on with the construction. Dr. Halwig and Ms. Noller have every right to use their home during this holidays.

Sincerely,

FRED SORORIAN, PE | Project Engineer  
 THOMAS & HUTTON

p 912-721-4128 m 912-547-3013

e sororian.f@thomasandhutton.com

a 50 Park of Commerce Way | Savannah, GA 31405 vCard | Website | LinkedIn | Facebook | Twitter | Instagram

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-----Original Message-----

**From:** Josey, J. Rene [mailto:Josey@TurnerPadget.com]

**Sent:** Friday, December 8, 2017 4:47 PM

**To:** Stanton, Robin <RStanton@MCNAIR.NET>; Nancy Halwig <ndhalwig@aol.com>; Sororian, Fred <sororian.f@thomasandhutton.com>; scott@pinco.biz; bev.noller@gmail.com

**Cc:** Halwig J. Michael <jmhalwigmd@aol.com>

**Subject:** RE: Your directive to cease and desist via Turner Paget

As requested.

J. Rene Josey

Attorney

Turner Padget Graham & Laney P.A.

PO Box 5478 | Florence, SC 29502

319 South Irby Street | Florence, SC 29501  
 843-656-4451 | Fax 843-413-5818  
 jjosey@turnerpadget.com

-----Original Message-----

From: Stanton, Robin [mailto:RStanton@MCNAIR.NET]  
 Sent: Friday, December 8, 2017 4:47 PM  
 To: Nancy Halwig; Josey, J. Rene; sororian.f@thomasandhutton.com; scott@pinco.biz; bev.noller@gmail.com  
 Cc: Halwig J. Michael  
 Subject: RE: Your directive to cease and desist via Turner Paget

I have responded to your counsel but for the benefit of others on this email, I have asked him for a copy of whatever agreement you are referencing and again require that work cease immediately until this is resolved.

Robin C. Stanton-  
 Shareholder-  
 rstanton@mcnair.net -

-  
 McNair Law Firm, P.A.-  
 Columbia Office | 1221 Main Street | Suite 1800 | Columbia, SC 29201-  
 803 799 9800 Main | 803 933 1516 Fax -  
 Mailing Post Office Box 11390 | Columbia, SC 29211- -  
 Bio: <http://www.mcnair.net/Professionals/rstanton>  
 -Website: <http://www.mcnair.net>

-----Original Message-----

From: Nancy Halwig [mailto:ndhalwig@aol.com]  
 Sent: Friday, December 08, 2017 4:11 PM  
 To: Stanton, Robin <RStanton@MCNAIR.NET>; jjosey@turnerpadget.com; sororian.f@thomasandhutton.com;  
 scott@pinco.biz; bev.noller@gmail.com  
 Cc: Halwig J. Michael <jmhalwigmd@aol.com>  
 Subject: Re: Your directive to cease and desist via Turner Paget

Robin:

Resending due to typo in Bev Nollers' email address in original email.

Nancy Halwig

Sent from my iPhone

> On Dec 8, 2017, at 3:55 PM, Nancy Halwig <ndhalwig@aol.com> wrote:

>

> Unfortunately it appears that you and your client are not aware of the prior agreement which had been obtained in September of a water and sewer easement to reconnect our home and the Nollers. We have been without this vital service since Hurricane Matthew. It's has taken over a year plus to obtain all the approvals and during this period we

Complainants 00115

have had no use of the homes. To be asked to cease work at this time comes as a total surprise. You will receive under separate cover from Rene Josey a copy the letter of agreement.

>  
> We realize that there are a lot of issues with the resort as it continues to be undercapitalized and unable to meet its obligations which has devalued and made our property currently inhabitable. We ask that you and your client honor the commitments made by the prior owners. It is in everyone's best interest that our home and the Nollers are maintained and inhabitable. We had hoped to be able to finally use our home over the holidays. An expeditious resolution is needed!

>  
> Thank you.

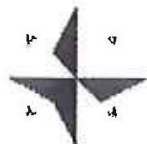
>  
> Nancy Halwig  
> J Michael Halwig

>  
>  
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>  
>  
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>  
>  
> Sent from my iPhone

---

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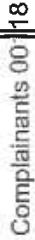
August 9th, 2017

As owners of the Melrose Golf Course at Daufuskie Island, South Carolina, this will confirm that we are aware of and cooperating with the efforts of Lot Owners along Driftwood Cottage Lane (Lots 1, 2, and 3) to restore water and sewer utilities to those properties in the aftermath of erosion issues destroying the prior water and sewer lines. In this regard, we have reviewed and give tentative approval to the plan developed by Professional Engineer Fred Sororian and his team at Thomas & Hutton Engineering. We have specifically reviewed the sketch prepared by Thomas & Hutton dated June 21, 2017 showing two possible routes for replacement water and sewer lines and we approve of the process moving forward for permitting and development using the shorter, northern proposed route – indicated in Blue on this sketch.

Best,

J.P. Bramlette  
Managing Partner





**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT**

**GENERAL PERMIT**

**Permittee:** Dr. Michael Halwig  
**Permit Number:** OCRM00756  
**Date of Issuance:** July 6, 2018  
**Expiration Date:** July 6, 2019  
**Location:** On and adjacent to the Atlantic Ocean at 36 Driftwood Lane, Daufuskie Island, Beaufort County, South Carolina.

**SEE SPECIAL  
CONDITIONS**

This permit is issued under the S.C. Coastal Zone Management Act of 1977 and the Final Rules and Regulations of SCDHEC OCRM. Please carefully read the project description and any special conditions that may appear on this permit/certification as they will affect the work that is allowed and may modify the work from that shown on the submitted plans. All special conditions attached to the permit will take precedent over submitted plans. If no special conditions have been placed on this permit, then the work is authorized as described in the project description and as modified by the general conditions. The general conditions are also a part of this permit and should be read in their entirety. **PLEASE CAREFULLY READ THE ENCLOSED "GUIDE TO BOARD REVIEW."**

**DESCRIPTION OF PROJECT:**

The plans submitted by you, attached hereto, show the authorized work consists of: The relocation and installation of water and sewer service lines and associated pumps. The lines will be approximately 620 LF of 1 1/2" force main and approximately 500 LF of 8" water main. This permit has been approved as stated, subject to the following conditions.

**SPECIAL CONDITIONS:**

1. Provided that the work is constructed in accordance with Attachment "A".
2. In the event that erosion results in the water lines, sewer lines, pump stations, or other associated infrastructure being located on the active beach as determined by Department staff, these materials must be removed immediately at the expense of the property owner.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS, AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS SCDHEC OCRM MAY CONSIDER APPROPRIATE.

1 of 12

SEE SPECIAL  
CONDITION(S)

OCRM00756

July 6, 2018

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

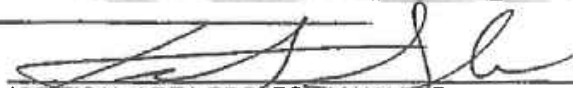
(PERMITTEE)

(DATE)

Dr. Michael Halwig

c/o Mr. Fred Sororian, Thomas and Hutton

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.



7/6/18

(CRITICAL AREA PROJECT MANAGER)

(DATE)

Trent D. Shaw

Other Authorized State Official

SEE SPECIAL  
CONDITION(S)

## GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

1. The permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. If the activity authorized herein is not constructed or completed within one year of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than thirty days prior to the expiration date.
3. All authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. This permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. The permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. Any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. This permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. If the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. The permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. The structure or work authorized herein shall be in accordance with the permit, as issued, and shall be maintained in good condition. Failure to build in accordance with the permit, as issued, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. The authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is in violation of the terms and/or conditions, including any special conditions of the permit. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to

3 of 12

**SPECIAL  
CONDITION(S)**

revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).

14. Any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. All activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. Extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.



ATTACHMENT A

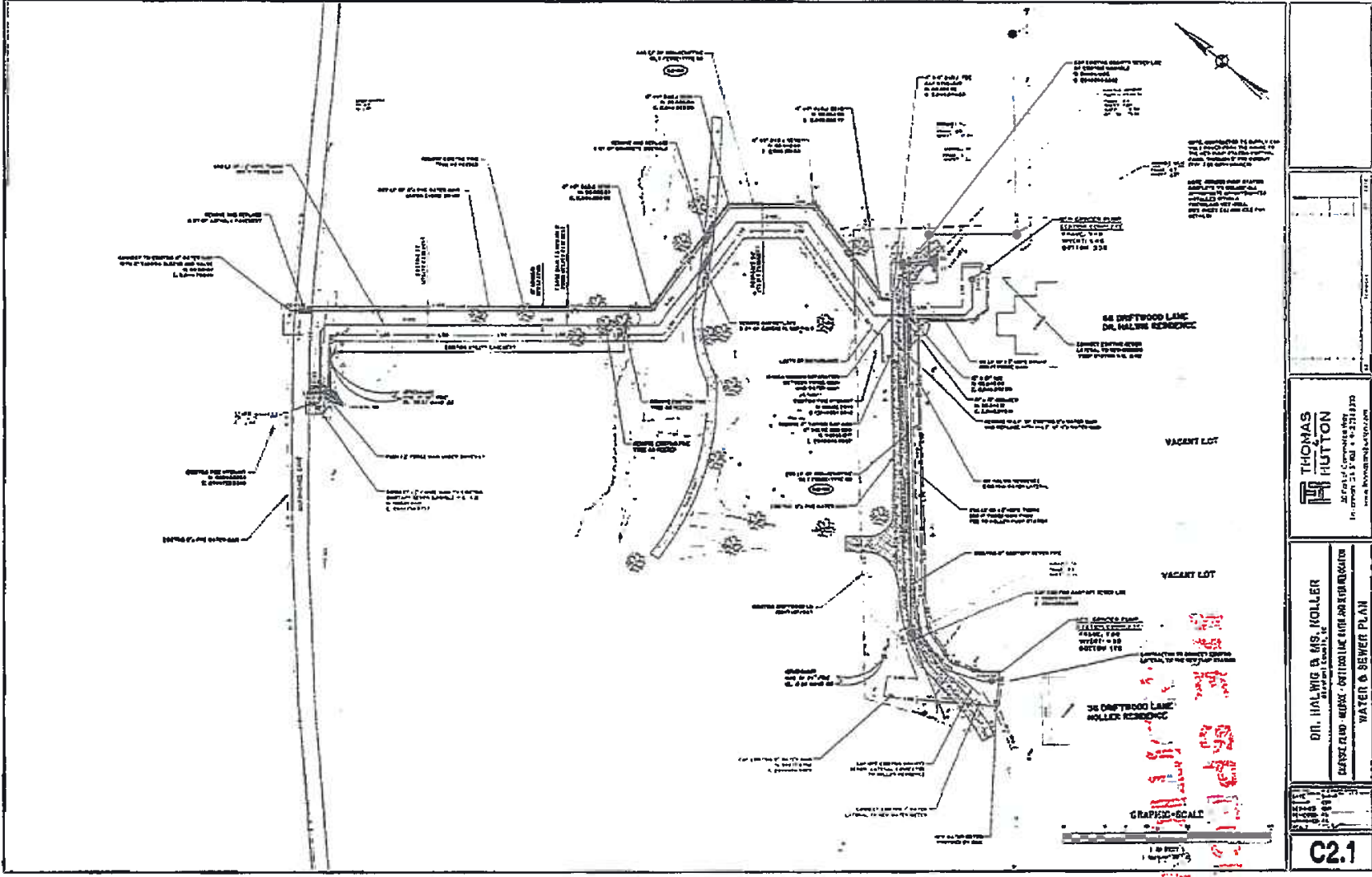
**SCDHEC-OCRM GENERAL PERMIT  
GP-90-A**

SEE SPECIAL  
CONDITION(S)

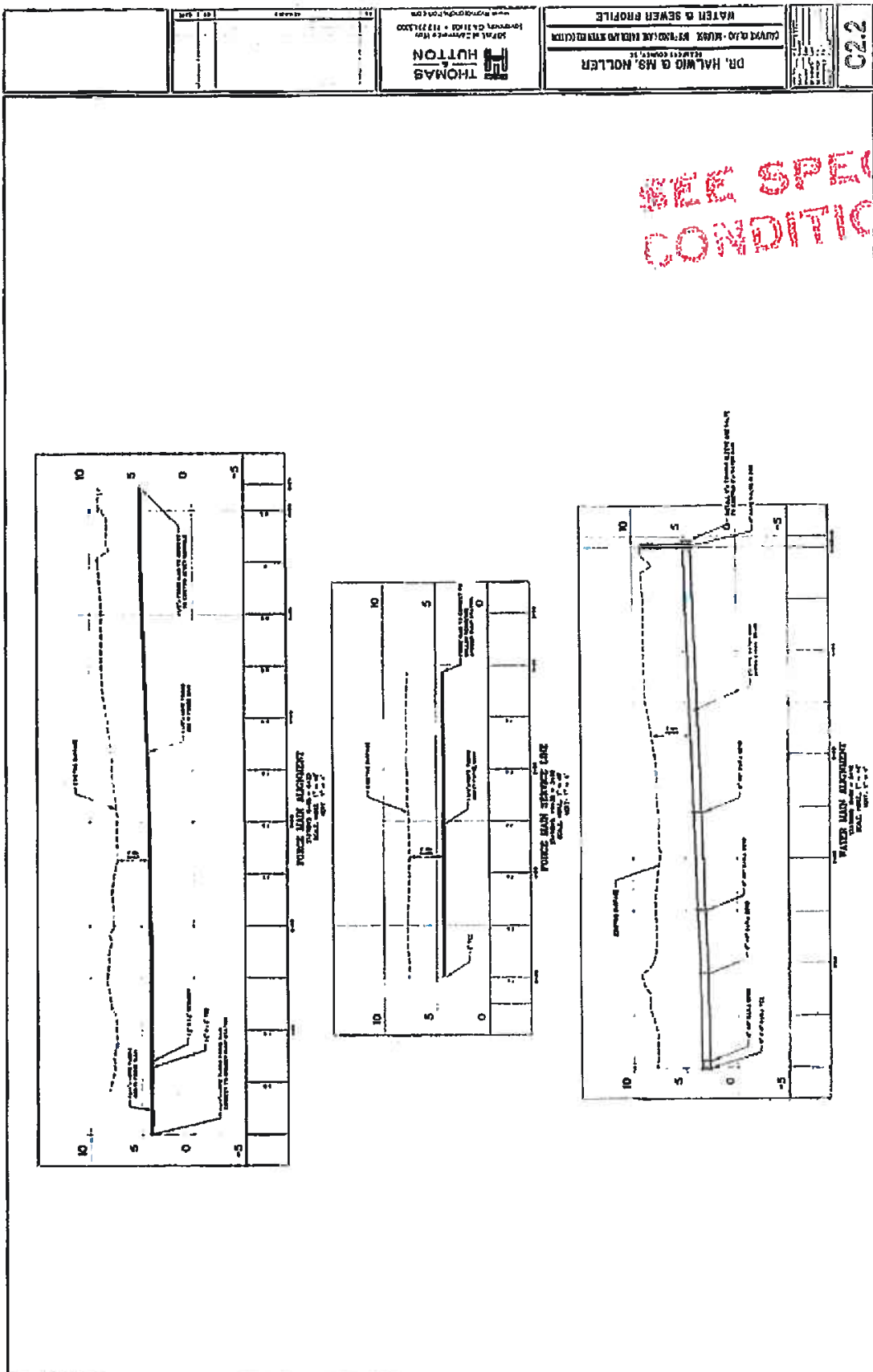
- WORK:** Installation or Repair of Underground and Overhead Water, Sewer, Gas, Electrical, Telephone, and Cable Service Lines.
- LOCATION:** Within the area between the setback line and the baseline in the counties of Horry, Georgetown, Charleston, Colleton, Beaufort, and Jasper.
- DESCRIPTION:** The placement, maintenance, repair, and replacement of service lines are allowed under this general permit provided that the following conditions are met:
1. All service lines shall be located as far landward as possible on each individual lot.
  2. Lines, junction boxes, poles, and accessory features will be relocated landward as far as possible in the event there is a need for replacement.
  3. Dunes allowed to be altered during construction shall be reconfigured and revegetated to preconstruction conditions.
  4. All work shall be in compliance with applicable local ordinances.
  5. A comprehensive plan for new or replacement utilities shall be approved in writing by OCRM.

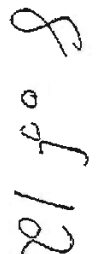
ATTACHMENT A

ATTACHMENT A



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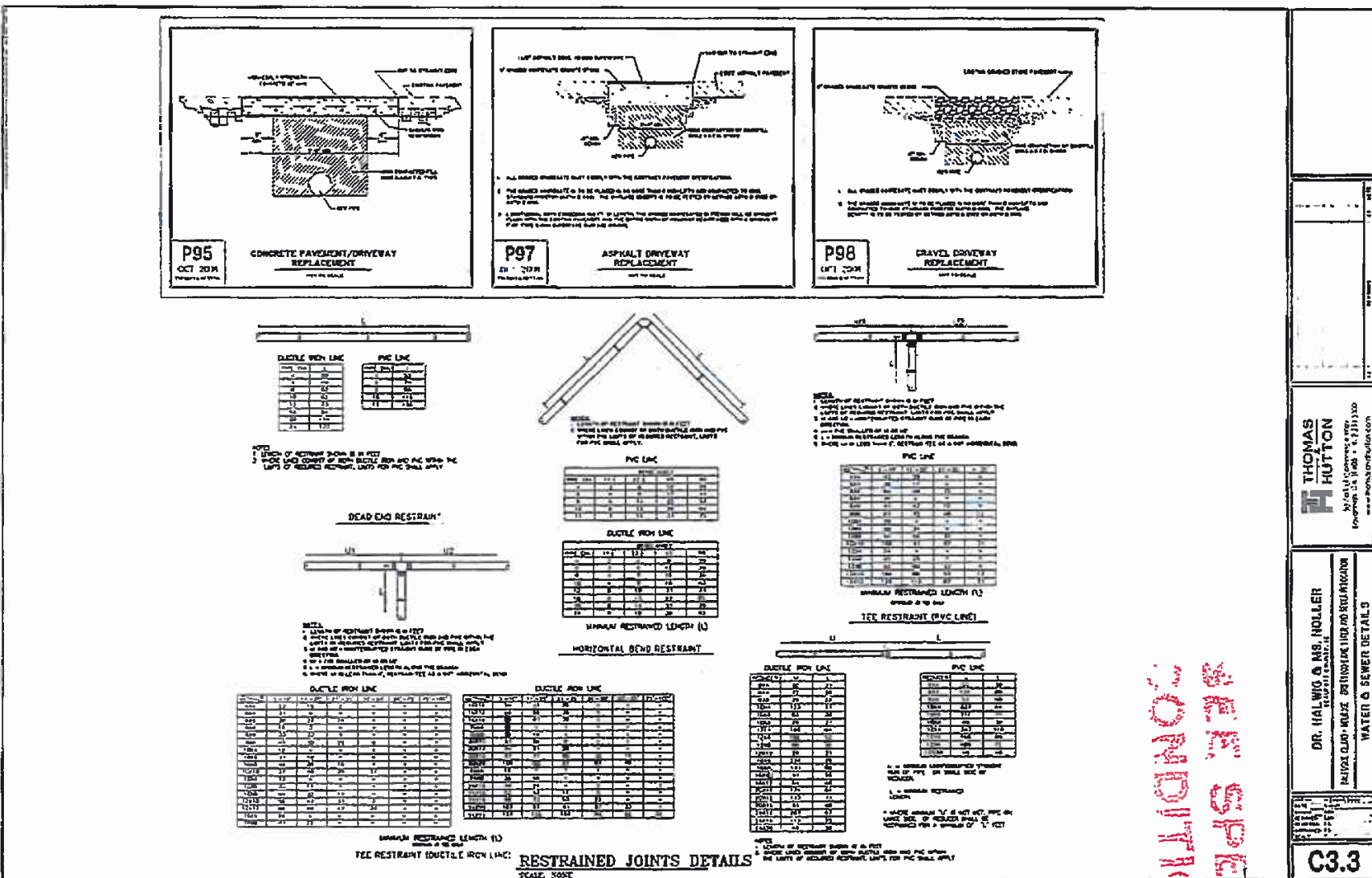
Complainants 00127





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Complainants 00128



# South Carolina Board of Health and Environmental Control

## Guide to Board Review

Pursuant to S.C. Code Ann. § 44-3-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

### 1. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and
  - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:  
 South Carolina Board of Health and Environmental Control  
 Attention: Clerk of the Board  
 2600 Bull Street  
 Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhce.sc.gov).

4. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

*NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.*

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

## II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
  - include the place, date and time of the Conference;
  - state the presentation times allowed in the Conference;
  - state evidence may be presented at the Conference;
  - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
  - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

## III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
  - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
    - Type of decision (permit, enforcement, etc.) and description of the program.
    - Parties
    - Description of facility/site
    - Applicable statutes and regulations
    - Decision and materials relied upon in the administrative record to support the staff decision.
  - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
  - Rebuttal by Department staff [15 minutes]
  - Rebuttal by Requestor(s) [10 minutes]

*Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.*
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

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